

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SINCERE SMITH,

Plaintiff,

v.

9:20-CV-1435
(GTS/CFH)

C.O. B. HUGGLER; C.O. A. DOWNING; and
C.O. K. BROOKS,

Defendants.

APPEARANCES:

OF COUNSEL:

SINCERE SMITH, 18-A-4013
Plaintiff, *Pro Se*
Mid-State Correctional Facility
P.O. Box 2500
Marcy, New York 13403

HON. LETITIA A. JAMES
Attorney General of the State of New York
Counsel for Defendants
The Capitol
Albany, New York 12224

BRENDA T. BADDAM, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Sincere Smith (“Plaintiff”) against the above-captioned corrections officers at Great Meadow Correctional Facility (“Defendants”), are (1) Plaintiff’s motion for summary judgment, (2) Defendants’ cross-motion for summary judgment, and (3) United States Magistrate Judge Christian F. Hummel’s Report-Recommendation recommending that Plaintiff’s motion be denied and Defendants’ cross-motion be granted in part and denied in part. (Dkt. Nos. 48, 51, 54.)

The parties have not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Hummel's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation:¹ Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 54) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's motion for summary judgment (Dkt. No. 48) is **DENIED**; and it is further

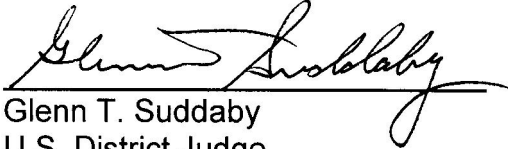
ORDERED that Defendants' cross-motion for summary judgment (Dkt. No. 51) is **GRANTED in part** and **DENIED in part**, in the following respects:

- (1) Plaintiff's failure-to-protect claims are **DISMISSED**,
- (2) Plaintiff's claims against Defendant Downing are **DISMISSED**, and
- (3) otherwise Plaintiff's pending claims **SURVIVE** Defendants' cross-motion for summary judgment; and it is further

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a "clear error" review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ORDERED that this case is referred back to Magistrate Judge Hummel.

Dated: January 23, 2023
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge